

SENATE BILL 2583
By Ketron

AN ACT to amend Tennessee Code Annotated, Title 4; Title 50 and Title 56, relative to establishing a workers' compensation review board.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding the following as a new Part 9:

Section 50-6-901.

(a) There is created a workers' compensation review board as an independent entity of state government.

(b) The workers' compensation review board shall consist of three (3) members appointed by the governor for terms of six (6) years who shall devote their entire time to the duties of the review board and shall administer the provisions of this chapter.

(1) One (1) member shall be an attorney who has at least five (5) years' experience representing employers in workers' compensation matters or shall be a person who, on account of such person's previous vocation, employment, or affiliation, has had at least five (5) years of experience as an employer and can be classed as a representative of employers.

(2) One (1) member shall be an attorney who has at least five (5) years' experience predominantly representing claimants in workers' compensation matters or employees in labor relations matters or shall be a person who on account of such person's previous vocation, employment, or affiliation, has had

at least five (5) years of membership in a bona fide labor organization and can be classed as a representative of employees.

(3) The third member shall be an attorney, who shall be chair of the review board and who shall have been engaged in active practice of law in Tennessee for not less than five (5) years next preceding the date of such person's appointment.

(c) Each member shall receive a salary as a state employee and shall be paid in the manner as are salaries of other state officials or employees.

(d)

(1) When any member of the review board is disqualified for any reason to hear and participate in the determination of any matter pending before the review board, the governor shall appoint a qualified person to hear and participate in the decision on the particular matter. The special member so appointed shall have all authority and responsibility with respect to the particular matter before the review board as if the person were a regular member of the review board but shall have no authority or responsibility with respect to any other matter before the review board.

(2) A person appointed as a special member of the review board pursuant to the provisions of this subdivision shall be entitled to receive a per diem not to exceed one hundred dollars (\$100) for each day spent in attending to such person's duties as a special member of the review board. The compensation shall be paid from any funds of the review board which are available for or may legally be used for paying such per diem.

Section 50-6-902.

(a) The governor, may, at any time, remove any member of the workers' compensation review board for inefficiency, neglect of duty, or misconduct in office, giving such person in advance a copy of the charges preferred and an opportunity of being publicly heard, in person or by counsel, upon not less than ten (10) days' notice.

(b) A representative of the attorney general and reporter's office shall attend the proceedings and upon the governor's request shall advise or assist such person therein.

(c) Either party may procure the attendance of witnesses and their testimony as is now provided by law in ordinary actions.

(d) If a member is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and such person's findings, together with a complete record of the proceedings had and a transcript of testimony. It shall constitute a public record of the state.

Section 50-6-903.

(a) Members of the workers' compensation review board shall be considered as officers and shall take the oath prescribed by the Tennessee Constitution and the laws of Tennessee.

(b)

(1) A majority of the review board shall constitute a quorum for the transaction of business, and vacancies shall not impair the right of the remaining members to exercise all the powers of the full review board, so long as a majority remains.

(2) Any investigation, inquiry, or hearing which the review board is authorized to hold or undertake may be held or undertaken by or before any one

(1) member of the review board, or referee acting for such person, under authorization of the review board.

(c)

(1) The review board shall maintain and keep open, during reasonable business hours, an office in Nashville, for the transaction of business, at which office its official records and papers shall be kept.

(2) The review board or any member of the review board may hold sessions and conduct hearings at any place within the state.

(d) The review board shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words: "workers' compensation review board, State of Tennessee".

Section 50-6-904.

(a)

(1) For the purpose of administering the provisions of this chapter, the workers' compensation review board is authorized:

(A) To make such rules and regulations as may be found necessary;

(B) To appoint and fix the compensation of temporary technical assistants and medical and legal advisers and to appoint and to fix the compensation of clerical assistants and other officers and employees; and

(C) To make such expenditures, including those for personal service, rent, books, periodicals, office equipment, and supplies, and for printing and binding as may be necessary.

(2) The review board shall promulgate rules in accordance with the provisions of Title 4, Chapter 5.

(b) The review board may appoint as many persons as may be necessary to be administrative law judges and in addition may appoint such examiners, rate experts, investigators, medical examiners, clerks, and other employees as it deems necessary to effectuate the provisions of this chapter.

(c) It shall be the duty of an administrative law judge, under the rules adopted by the review board, to hear and determine claims for compensation and to conduct hearings and investigations and to make such orders, decisions, and determinations as may be required by any rule or order of the review board.

(d) For administrative purposes, the review board shall be attached to the department of labor and workforce development for all administrative matters relating to receipts, disbursements, expense accounts, budget, and other related items.

Section 50-6-905.

Any member or employee of the workers' compensation review board shall be entitled to receive such person's necessary traveling expenses in accordance with the travel regulations promulgated by the commissioner of finance and administration.

Section 50-6-906.

(a) In addition to its other duties and powers, the workers' compensation review board is given and granted full power and authority:

(1) To hear and determine all claims for compensation, including claims based upon injuries which occurred outside the state of Tennessee for which compensation is payable under this chapter;

(2) To require and order medical services for and examinations of injured employees in accordance with the provisions of Part 2 of this chapter;

(3) To approve claims for medical services and attorney's fees;

(4) To excuse failure to give notice either of injury or death of any employee;

(5) To approve agreements, make, modify, or rescind awards, and make and enter findings of fact and rulings of law;

(6) To enter orders in appealed cases;

(7) To determine the time for the payment of compensation and order the reimbursement of employers for amounts advanced;

(8) To assess penalties;

(9) To prescribe rules and regulations governing the representation of employees, employers, and carriers in respect to claims before the review board;

(10) To issue subpoenas, administer oaths, and take testimony, by deposition or otherwise;

(11) To make surveys and to determine the existence and prevalence of occupational disease hazards within this state, to determine the measures necessary to eliminate or reduce these hazards, and to add to the schedule of occupational diseases subject to appropriate conditions and after public hearing;

(12) To make available all records in connection with all cases of personal injury to the division of workers' compensation. The director of the division may propose rules for the prevention of injuries and transmit the rules to the review board. The review board may recommend to the director proposed rules for prevention of injuries; and

(13) To have and exercise all other powers and duties conferred or imposed by this chapter.

(b)

(1) In addition to the other powers and duties granted to the review board in this section and otherwise provided by law, the review board is authorized to establish and impose reasonable fees to recover the cost of preparation of various informative materials distributed by the review board.

(2) The fees shall be established by regulation of the review board.

(3) Funds derived from fees shall be deposited in the workers' compensation fund to be used to defray expenses incurred in preparation and distribution of materials.

(c) There is hereby established a general fund reserve to be allocated by the General Appropriations Act which shall be known as the "workers' compensation fund". Moneys from the fund may be expended to fund activities authorized by this part. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any excess revenues on interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

Section 50-6-907.

On or before the first day of the regular session of the general assembly, the workers' compensation review board under the authority of at least two (2) of its members shall make to the governor and to the general assembly a report of the

administration of this chapter for the preceding biennial period, together with such recommendations as the review board may deem advisable.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding the following as a new Part 10:

Section 50-6-1001.

(a) After a claim for compensation has been filed, the workers' compensation review board shall notify the employer and any other interested person of the filing of the claim and shall refer all interested persons to the benefit review conference. The review board shall make or cause to be made such investigation as it considers necessary in respect to the claim.

(b)

(1) After the benefit review conference process is complete and upon application of any interested party, or on its own motion, the review board shall order a hearing.

(2) An application for a hearing must set forth clearly the specific issues of fact or law in controversy and the contentions of the party applying for the hearing.

(3) If any party is not represented by a lawyer, the administrative law judge shall define the issues to be heard.

(4)

(A) If a hearing on the claim is ordered, the review board shall give the claimant and other interested parties ten (10) days' notice of the hearing served personally upon the claimant and other parties, or by registered mail.

(B) The hearing shall be held in the county where the accident occurred, if the accident occurred in this state, unless otherwise agreed to between the parties, or otherwise directed by the review board. If the accident occurred without the state of Tennessee, and is one for which compensation is payable under this chapter, the hearing may be held in

the county of the employer's residence or place of business, or any other county in the state of Tennessee which will, in the discretion of the review board, be most convenient for the hearing.

(5) The award or the denial of a claim, together with the statement of the findings of fact and other matters pertinent to the issues, shall be filed with the review board and it shall be accompanied by the record of the proceedings, and a copy of the award or the denial of the claim shall immediately be sent to the parties in dispute or to their attorneys.

(6)

(A) If an application for review is filed in the office of the review board within thirty (30) days from the date of the receipt of the award or denial, the full review board shall review the evidence or, if deemed advisable, hear the parties, their representatives, and witnesses, and shall make awards or denials, together with its rulings of law, and file same in like manner as specified in the foregoing.

(B) A copy of the award or denial made on review shall immediately be sent to the parties in dispute or to their attorneys.

(7) The full review board may remand to a single member of the review board or an administrative law judge any case before the full review board for the purpose of taking additional evidence. The evidence shall be delivered to the full review board and shall be taken into consideration before rendering any decision or award in the case.

(c)

(1)

(A)

(i) At the hearing the claimant and the employer may each present evidence in respect of the claim and may be represented by any person authorized in writing for such purpose.

(ii) The evidence may include verified medical reports which shall be accorded such weight as may be warranted from all the evidence of the case.

(B) Any determination of the existence or extent of physical impairment shall be supported by objective and measurable findings.

(2) When deciding any issue, administrative law judges and the review board shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence.

(3) Administrative law judges, the review board, and any reviewing courts shall construe the provisions of this chapter in accordance with the provisions of Section 50-6-116.

(4) Unless specifically provided otherwise, in determining whether a party has met the burden of proof on an issue, administrative law judges and the review board shall weigh the evidence impartially and without giving the benefit of the doubt to any party.

(d) The order denying the claim or making the award shall be filed in the office of the review board, and a copy shall be sent by registered mail to the claimant and to the employer or to their attorneys.

(e)

(1) No compensation for disability of an injured employee shall be payable for any period beyond such person's death.

(2) However, an award of compensation for disability may be made after the death of the injured employee for the period of disability preceding death.

Section 50-6-1002.

(a)

(1) In making an investigation or inquiry or conducting a hearing, the workers' compensation review board shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure, except as provided

by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner as will best ascertain the rights of the parties.

(2) Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made, or the hearing conducted, may be received in evidence and may, if corroborated by other evidence, be sufficient to establish the injury.

(3) When deciding any issue, administrative law judges and the review board shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence.

(b)

(1)

(A) Hearings before the review board shall be open to the public and shall be stenographically reported, and the review board is authorized to contract for the reporting of the hearings.

(B) The review board shall, by rule or regulation, provide for the preparation of a record of all hearings and other proceedings before it.

(2) However, the review board shall not be required to stenographically report or prepare a record of joint petition hearings. Instead, the administrative law judge or legal advisor shall tape the hearing at no cost to the parties.

(c)

(1)

(A) All oral evidence or documentary evidence shall be presented to the designated representative of the review board at the initial hearing on a controverted claim, which evidence shall be stenographically reported.

(B) Each party shall present all evidence at the initial hearing.

(C)

(i) Further hearings for the purpose of introducing additional evidence will be granted only at the discretion of the hearing officer or review board.

(ii) A request for a hearing for the introduction of additional evidence must show the substance of the evidence desired to be presented.

(2)

(A) Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the review board copies of the written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of the hearing. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, notify in writing the opposing party and the review board of the name and address of the physicians proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of their anticipated testimony.

(B) If the opposing party desires to cross-examine the physician, such person should notify the party who submits a medical report to such person as soon as practicable, in order that the parties may make every effort to have the physician present for the hearing.

(3) A party failing to observe the requirements of this subsection may not be allowed to introduce medical reports or testimony of physicians at a hearing, except in the discretion of the hearing officer or the review board.

(4) The time periods may be waived by the consent of the parties.

Section 50-6-1003.

(a) The workers' compensation review board shall have the power to preserve and enforce order during any proceeding had before it, to issue subpoenas for and

administer oaths to and compel the attendance and testimony of witnesses, and require the production of books, papers, documents, and other evidence.

(b) If any person or party in proceedings before the review board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof so as to obstruct the hearing, or neglects to produce, after having been ordered to do so, any book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having taken the oath refuses to be examined according to law, or refuses to comply with any final order of an administrative law judge or the review board, or willfully refuses to pay an uncontroverted medical or related expense within forty-five (45) days after the respondent has received the statement, then the person or party, at the discretion of the administrative law judge or the review board, may be found to be in contempt of the review board and may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) to be imposed by the review board.

Section 50-6-1004.

In any proceeding for the enforcement of a claim for compensation, the following prima facie presumptions shall exist:

- (1) That the workers' compensation review board has jurisdiction;
- (2) That sufficient notice was given; and
- (3) That the injury was not occasioned by the willful intention of the injured employee to bring about the injury of such person or another.

Section 50-6-1005.

The workers' compensation review board may cause depositions of witnesses to be taken in such manner as it may direct.

Section 50-6-1006.

Each witness who appears in obedience to a subpoena shall be entitled to the same fees as witnesses in a civil action in the circuit court, subject to the provisions of Section 50-6-235.

Section 50-6-1007.

(a) Where the workers' compensation review board is a party to or is otherwise interested in a court proceeding under this chapter, it may employ attorneys to appear in its behalf.

(b) If requested by the review board, it shall be the duty of the attorney general and reporter to represent the review board without extra compensation.

Section 50-6-1008.

(a)

(1) A compensation order or award of an administrative law judge or a single commissioner shall become final unless a party to the dispute shall, within thirty (30) days from the entry of the order or award, petition in writing for a review by the full review board of the order or award.

(2) Any other party to the dispute may cross appeal by filing a written petition for cross appeal within fifteen (15) days after the notice of appeal is filed in the office of the workers' compensation review board, except that in no event shall a cross appellant have less than thirty (30) days from the entry of the order or award within which to file a notice of cross appeal.

(b) Judicial review shall be available in accordance with the provisions of Title 4, Chapter 5, Part 3.

(1) A compensation order or award of the review board shall become final unless a party to the dispute shall, within thirty (30) days from entry of the order or award, seek judicial review pursuant to Title 4, Chapter 5, Part 3.

(2) Appeals from the review board to a court for judicial review shall be allowed as in other civil actions and shall take precedence over all other civil cases appealed to the court.

(c)

(1) In all appeals, the cost shall be assessed as provided by law in civil cases.

(2) The review board may require a bond from either party, if it deems necessary, in cases appealed to the court.

Section 50-6-1009.

If any employer fails to comply with a final compensation order or award, any beneficiary of the order or award, or the workers' compensation review board, may file a certified copy of the order or award in the office of the circuit clerk of any county in this state where any property of the employer may be found. At that time, the circuit clerk shall enter the order or award in the judgment record of the county, and the order or award so recorded shall be a judgment and lien as are judgments of the circuit court, and enforceable as such.

Section 50-6-1010.

(a)

(1) Except where a settlement has been approved pursuant to Part 2 of this chapter, the workers' compensation review board may review any compensation order, award, or decision in accordance with the provisions of Part 2 of this chapter.

(2) Upon the review, the review board may make an order or award terminating, continuing, decreasing, or increasing for the future the compensation previously awarded, subject to the maximum limits provided for in this chapter.

(b) No review shall affect any compensation paid pursuant to a prior order or award.

(c) The review board may, at any time, correct any clerical error in any compensation order or award.

Section 50-6-1011.

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect to the claim or order have been instituted or continued without reasonable grounds, the cost of the proceedings shall be assessed against the party who has instituted or continued the proceedings.

SECTION 3. Tennessee Code Annotated, Section 50-6-102, is amended by adding the following as a new item to be appropriately designated:

() "Review board" means the workers' compensation review board created by Section 50-6-901; provided, however where appropriate in Part 2 of this chapter, review board includes an administrative law judge operating pursuant to Parts 9 and 10 of this chapter.

SECTION 4. Tennessee Code Annotated, Section 50-6-116, is amended by deleting the language "the courts" and by substituting instead the language "the workers' compensation review board and the courts".

SECTION 5. Tennessee Code Annotated, Section 50-6-201(a), is amended by deleting the word "tribunal" and by substituting instead the words "review board".

SECTION 6. Tennessee Code Annotated, Section 50-6-203(a), is amended in the first sentence by deleting the language "the tribunal having jurisdiction to hear and determine the matter" and by substituting instead the language "the review board". Tennessee Code Annotated, Section 50-6-203(a), is further amended by deleting in the second sentence the language "compensation suit" and by substituting instead the language "compensation action".

SECTION 7. Tennessee Code Annotated, Section 50-6-204(a)(5), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(5) All cases of dispute as to the value of such services shall be determined by the review board. The review board may also deny payment of physicians' fees and hospital charges for failure to submit the reports as required herein.

SECTION 8. Tennessee Code Annotated, Section 50-6-204(b)(2), is amended by deleting the language "a court" and by substituting instead the language "the review board".

SECTION 9. Tennessee Code Annotated, Section 50-6-204(d)(5), is amended by deleting the language "the court" wherever it appears and by substituting instead the language "the review board".

SECTION 10. Tennessee Code Annotated, Section 50-6-204(g)(2), is amended by deleting the language "the tribunal having jurisdiction of the matter of compensation to the employee" and by substituting instead the language "the review board".

SECTION 11. Tennessee Code Annotated, Section 50-6-206(a) and (b), are amended by deleting the subsections in their entireties and by substituting instead the following:

(a) The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the review board. It shall be the duty of the review board to whom any proposed settlement shall be presented for approval under this chapter, to examine the same to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law. To this end, the review board may call and examine witnesses. Upon such settlement being approved, an order shall be entered thereon by the review board. The cost of the proceeding shall be borne by the employer. Certified copies of all papers and orders filed or entered by the review board upon the approval of such settlement, together with a copy of the settlement agreement, shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of the order. If it appears that any settlement approved by the review board does not secure to the employee in a substantial manner the benefits of the Workers' Compensation Law, the same may, in the discretion of the review board, be set aside at any time within thirty (30) days after the receipt of such papers by the division, upon the application of the employee or the administrator of the division in the employee's behalf, notwithstanding § 50-6-230 to the contrary. In all cases where such settlement proceedings or any other proceedings for workers' compensation under this chapter involve a subsequent injury wherein the employee would be entitled to receive or is claiming compensation from the second injury fund provided for in § 50-6-208, the administrator shall be made a party defendant to the proceedings in an action filed by either the employer or the injured employee and an attorney representing the department under the supervision of the attorney general and reporter shall represent the administrator in such proceeding, and the review board, by its order shall determine the right of the claimant to receive compensation from such fund, and the review board shall furnish to the administrator a certified copy of such order, the cost of which shall be added to the costs of such proceedings and shall be paid as other costs are ordered in the case.

(b) Notwithstanding any other provision of this section, whenever there is a dispute between the parties as to whether a claim is compensable or the amount of compensation due, the parties may settle such matter without regard to whether the employee is receiving substantially the benefits provided by the Workers' Compensation Law; provided, that such settlement is approved by the review board; and provided further, that the settlement is found by the review board to be for the best interest of the employee.

SECTION 12. Tennessee Code Annotated, Section 50-6-206(c)(2), is amended by inserting the language "or the review board" between the language "of record" and "for purposes".

SECTION 13. Tennessee Code Annotated, Section 50-6-206(c)(3), is amended by deleting the language "a court" and by substituting instead the language "the review board" wherever it appears in items (A) and (B).

SECTION 14. Tennessee Code Annotated, Section 50-6-206(c)(4), is amended by deleting the language "any court with jurisdiction to hear the underlying workers' compensation claim" and by substituting instead the language "the review board".

SECTION 15. Tennessee Code Annotated, Section 50-6-207(1)(B)(i), is amended in the third sentence by deleting the language "a court" and by substituting instead the language "the review board".

SECTION 16. Tennessee Code Annotated, Section 50-6-207(3)(D), is amended by deleting the language "in the opinion of a court having jurisdiction over the underlying workers' compensation claim" and by substituting instead the language "the review board determines".

SECTION 17. Tennessee Code Annotated, Section 50-6-207(3)(F), is amended by deleting the language "a court of competent jurisdiction" and by substituting instead the language "the review board".

SECTION 18. Tennessee Code Annotated, Section 50-6-207(4)(C)(i), is amended by deleting the language "trial" and by substituting instead the language "administrative proceeding before the review board".

SECTION 19. Tennessee Code Annotated, Section 50-6-207(4)(C)(v), is amended by deleting the language "court originally adjudging or approving the award of permanent total disability" and by substituting instead the language "review board".

SECTION 20. Tennessee Code Annotated, Section 50-6-207(4)(C)(vii), is amended by deleting the language "court" wherever it appears and by substituting instead the language "review board".

SECTION 21. Tennessee Code Annotated, Section 50-6-207(6), is amended by deleting the language " court " wherever it appears and by substituting instead the language "review board".

SECTION 22. Tennessee Code Annotated, Section 50-6-208(e), is amended by deleting the third, fourth, and fifth sentences of the subsection and by substituting instead the following:

Disbursements from the fund shall be made by the administrator only after receipt by the administrator of a certified copy of the review board order awarding such compensation as is provided for herein. Disbursements shall be made only in accordance with the order. A copy of the order awarding compensation from the second injury fund shall in all cases be filed with the division.

SECTION 23. Tennessee Code Annotated, Section 50-6-225, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-225.

(a) In case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and employee or the dependents of the employee, either party may file an administrative action with the review board.

(b) The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence shall not apply to actions filed pursuant to this section, unless the provisions of this chapter require otherwise.

(c) Unless required to be filed by an earlier date as a result of discovery requests pursuant to the Tennessee Rules of Civil Procedure, within sixty (60) days after the filing of an answer in an action under this section, the employer shall file with the review board

a wage statement detailing the employee's wages for the previous fifty-two (52) weeks, unless the employer stipulates that the maximum weekly workers' compensation rate applies in the particular action.

(d) Whenever any action is brought pursuant to this section, the review board may, if the review board so desires, visit the scene of the accident and examine the surroundings.

(e) Any party to the proceedings before the review board may, if dissatisfied or aggrieved by the order of the review board, seek judicial review in accordance with the provisions of Section 4-5-322.

(f)

(1) If the order of the review board is appealed pursuant to subsection (e), interest on the order shall be computed from the date that the order is entered by the review board at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the board of governors of the federal reserve system on the total judgment finally awarded. For purposes of calculating the accrual of interest pursuant to this subdivision, the average prime loan rate on the day the order is entered by the review board shall be used.

(2) Total judgment awarded is computed by the total number of weeks multiplied by the benefit rate without any reduction.

(3) For purposes of this subsection, "order" includes any discretionary costs awarded pursuant to this chapter.

(4) For purposes of determining the amount of interest that has accrued on an order, the commissioner of financial institutions shall maintain a listing of the average prime loan rate as it becomes available each month, and such office shall respond to inquiries concerning what such average prime rate was on a given month and year. If the person making the inquiry so requests, the commissioner shall send such person a letter certifying what the average prime rate was on the month and year requested. The commissioner is authorized to

charge a reasonable fee not to exceed ten dollars (\$10.00) for preparing and sending such letter.

(g) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by such court, without remand, against the appellant for a liquidated amount.

(h) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by such court, without remand, against the appellant for a liquidated amount.

(i) If an employer wrongfully fails to pay an employee's claim for temporary total disability payments, the employer shall be liable, in the discretion of the review board, to pay the employee, in addition to the amount due for temporary total disability payments, a sum not exceeding twenty-five percent (25%) of such temporary total disability claim; provided, that it is made to appear to the review board that the refusal to pay such claim was not in good faith and that such failure to pay inflicted additional expense, loss, or injury upon the employee; and provided further, that such additional liability shall be measured by the additional expense thus entailed.

(j) If, on request by the specialist, a party fails to produce documents, to cooperate in scheduling a conference, or to provide a representative authorized to settle a matter in attendance at a conference, then a specialist may declare an impasse and file the report on unresolved issues with the review board. On the motion of either party or on the review board's own motion, the review board is authorized, but not required, to hold a hearing on the failure to produce documents requested by the specialist, to cooperate in scheduling, or to provide a representative who possessed settlement authority. If the review board determines that such failure lacked good cause or resulted from bad faith, then the review board may assess the offending party who failed to take such requested action, with attorney's fees and costs related only to the administrative proceeding. The commissioner of labor and workforce development is authorized to

promulgate rules to effectuate the purposes of this subsection in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(k) If an employee receives a settlement or order under this chapter which includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of such settlement or order or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide such medical treatment, the employer or workers' compensation carrier shall be liable, in the discretion of the review board, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of such expenses; provided, that it is made to appear to the review board that the refusal to pay such claim was not in good faith and that such failure to pay inflicted additional expense, loss, or injury upon the employee.

SECTION 24. Tennessee Code Annotated, Section 50-6-226, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-226.

(a)

(1) The fees of attorneys for services to employees under the Workers' Compensation Law shall be subject to the approval of the commissioner or the review board before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. All attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by the review board when the fee exceeds ten thousand dollars (\$10,000).

(2)

(A) Medical costs that have been voluntarily paid by the employer or its insurer shall not be included in determining the award for purposes of calculating the attorney's fee.

(B) For cases submitted to the department for approval pursuant to § 50-6-206(c) which are resolved prior to hearing or pursuant to a benefit review conference, the department shall deem the attorney's fee to be reasonable if such fee does not exceed the lesser of twenty percent (20%) of the award to the injured worker or ten thousand dollars (\$10,000). For fees in excess of ten thousand dollars (\$10,000), the review board shall review such case solely for the purpose of approving such fees as are reasonable.

(C) In cases that proceed to hearing, an employee's attorney shall file an application for approval of a proposed attorney's fee. Where the award of an attorney's fee exceeds ten thousand dollars (\$10,000), the review board shall make specific findings as to the factors which justify such a fee as provided in the Rules of the Supreme Court.

(D) The final order or settlement in all workers' compensation cases shall set out the attorney portion of the award in both dollar and percentage terms and the required findings.

(E) Beginning July 1, 1997, on an annual basis, the commissioner shall adjust the ten thousand dollar (\$10,000) threshold used in this section to reflect the percentage change in the state's average weekly wage as determined by the division of employment security from year to year.

(3) In accident cases that result in death of an employee, the plaintiff's attorney's fees shall not exceed reasonable payment for actual time and expenses incurred when the employer makes a voluntary settlement offer in writing to dependents or survivors eligible under § 50-6-210 within thirty (30) days of the employee's death if the employer offers to provide the dependents or

survivors with all the benefits provided under the Workers' Compensation Law. The approving authority shall review and approve all such settlements on an expedited basis.

(4) The fees of physicians and charges of hospitals for services to employees under the Workers' Compensation Law shall be subject to the approval of the commissioner or the review board before which the matter is pending, as appropriate, as provided in this subdivision. Unless a medical fee or charge is contested, the department shall deem it to be reasonable. If a fee or charge is contested, the department shall permit a party to seek review only of the contested fee or charge by the review board. The review board may review such case solely for the purpose of approving such fees and charges as are reasonable.

(b) The charging or receiving of any fee by an attorney in violation of subsection (a) shall be deemed unlawful practice and render the attorney liable to disbarment; and, further, such attorney shall forfeit double the entire amount retained by such attorney, to be recovered as in case of debt by the injured person or the injured person's creditor.

(c)

(1) The fees charged to the claimant by the treating physician or a specialist to whom the employee was referred for giving testimony by oral deposition relative to the claim, shall, unless the interests of justice require otherwise, be considered a part of the costs of the case, to be charged against the employer when the employee is the prevailing party.

(2) The review board shall have the discretion to determine the reasonableness of the fee charged by any physician pursuant to the provisions of this subsection.

SECTION 25. Tennessee Code Annotated, Section 50-6-227(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a)

(1) In case a deceased employee for whose injury or death compensation is payable under the provisions of the Workers' Compensation Law leaves surviving such deceased employee an alien dependent or dependents residing outside of the United States, the review board shall hear and determine the matter and order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if there is such consular officer residing in this state, and if not, to the designated representative of such consular officer residing within this state, and such consular officer or such consular officer's representative shall be fully authorized and empowered by this law to settle all claims for compensation and receive for distribution to the persons entitled thereto such compensation.

(2) The distribution of such funds in such case shall be only made on the order of the review board. If required so to do by the review board, such consular officer or such consular officer's representative shall execute a good and sufficient bond to be approved by the review board, conditioned upon the faithful accounting of the moneys so received by such consular officer or such consular officer's representative, and before such bond is discharged a verified statement of receipts and disbursements of such moneys shall be made and filed in the review board.

SECTION 26. Tennessee Code Annotated, Section 50-6-229, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The amounts of compensation payable periodically hereunder may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the review board. No agreed stipulation or order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the review board's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making such commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments

of compensation. No settlement or compromise shall be made except on the terms herein provided. In determining whether to commute an award, the review board shall consider whether the commutation will be in the best interest of the employee, and the review board shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs. Attorney's fees may be paid as a partial lump sum from any award when approved and ordered by the review board.

(b)

(1) Certified copies of the pleadings, orders, judgments, and decrees, whereby any lump sum payment settlement has been approved by the review board shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of any final order in any such proceeding.

(2) The administrator shall have thirty (30) days after the receipt of any such certified copies of such proceedings within which to intervene in the lump sum settlement proceedings to secure a readjustment of the same in accordance with the requirements and provisions of this law, whether the review board shall have adjourned or not, § 50-6-230 to the contrary notwithstanding.

SECTION 27. Tennessee Code Annotated, Section 50-6-230, is amended by deleting the language "the court" and by substituting instead the language "the review board".

SECTION 28. Tennessee Code Annotated, Section 50-6-231, is amended by deleting the language "the court" and by substituting instead the language "the review board".

Tennessee Code Annotated, Section 50-6-231, is further amended by deleting the language "the courts" and by substituting instead the language "the review board".

SECTION 29. Tennessee Code Annotated, Section 50-6-232, is amended in subsection (b) by deleting the language "the clerk of the circuit court" and by substituting instead the language "the review board". Tennessee Code Annotated, Section 50-6-232, is further amended in subsections (a) and (d) by deleting the language "the court" wherever it appears

and by substituting instead the language "the review board" and by deleting the language "of court" and by substituting instead "of the review board".

SECTION 30. Tennessee Code Annotated, Section 50-6-234, is amended in subsection (b) by deleting the language "the court" and by substituting instead the language "the review board". Tennessee Code Annotated, Section 50-6-234, is further amended in subsection (a) by deleting the language "a court of proper jurisdiction" and by substituting instead the language "the review board".

SECTION 31. Tennessee Code Annotated, Section 50-6-235(a)(1), is amended by deleting the language "the court" and by substituting instead the language "the review board".

SECTION 32. Tennessee Code Annotated, Section 50-6-238, is amended by deleting subsections (b) and (c) and by substituting instead the following:

(b) If a specialist has ordered the payment of benefits pursuant to this section, and the review board finds that the injury was noncompensable, then an employer or the employer's workers' compensation insurer is entitled to a refund of all amounts paid pursuant to a specialist's order from the second injury fund established by § 50-6-208, within thirty (30) days of submission of appropriate evidence of such finding to the division of workers' compensation. If the refund is not made within thirty (30) days, then the employer is entitled to interest at the rate of ten percent (10%) per annum from the date the refund became overdue.

(c) Evidence of the denial of initiation, continuation, or reinstitution of compensation ordered pursuant to this section by a workers' compensation specialist is inadmissible in a subsequent proceeding. In a case where an employer or insurer has paid benefits pursuant to an order of a workers' compensation specialist, and the employer or insurer wishes to contest the compensability of the injury, then the review board shall hear the issue de novo, and no presumption of correctness is given to any prior determination.

SECTION 33. Tennessee Code Annotated, Section 50-6-239, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-239.

(a) On receipt of a request from a party or on its own motion, the review board may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) Immediately following a benefit review conference, either party may move the review board to set the case for final adjudication on an expedited basis.

(c)

(1) At the time of a request for a benefit review conference or a review board mandated conference, the division of workers' compensation shall notify the parties in writing of the length of time required to make available a specialist to conduct a conference. If the time period is thirty (30) days or less, then the conference is mandatory for the parties. Notwithstanding any other provision of law to the contrary, if the time period exceeds thirty (30) days, then the conference is optional for that case and the division shall inform the parties in writing that the conference is not required. The parties shall cooperate in scheduling a conference. The commissioner is authorized to promulgate rules concerning scheduling pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. A violation of such rules is a basis for a specialist to declare an impasse and conclude a conference.

(2) When a benefit review conference program is mandatory for a case, the review board may not conduct a hearing or enter an agreed order without a report from a workers' compensation specialist pursuant to § 50-6-240, unless permitted by this section. Prior to the hearing or the entry of an order, the review board shall determine from the parties whether a benefit review conference was held and whether the division determined that the conference was optional or mandatory.

(3) An employer and employee (or their representatives) may agree in writing to waive a mandatory benefit review conference.

(4) In all cases where the parties have any issues in dispute, the parties shall request the department to hold a benefit review conference.

SECTION 34. Tennessee Code Annotated, Section 50-6-240(c), is amended by deleting the language "court" wherever it appears and by substituting instead the language "the review board" in each instance.

SECTION 35. Tennessee Code Annotated, Section 50-6-241, is amended by deleting the language "the court" wherever it appears and by substituting instead the language "the review board". Tennessee Code Annotated, Section 50-6-241, is further amended in subdivision (a)(2) by deleting the language "the courts" and by substituting instead the language "the review board".

SECTION 36. Tennessee Code Annotated, Section 50-6-242, is amended by deleting the language "the court" and by substituting instead the language "the review board". Tennessee Code Annotated, Section 50-6-242 is further amended by deleting the language "the trial judge" and by substituting instead the language "the review board".

SECTION 37. Tennessee Code Annotated, Section 50-6-244, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-244.

(a) The department shall develop a statistical data form for collecting data relevant to assessing the workers' compensation system. In developing or altering the form, the department shall seek written comment from the advisory council on workers' compensation and the administrative office of the courts. The commissioner shall submit the proposed form to the special joint committee on workers' compensation, together with any written comments of the advisory council on workers' compensation and the administrative office of the courts, prior to submission of a proposed rule to the attorney general and reporter. The initial rule shall be submitted to the committee prior to October 1, 1998. The commissioner shall promulgate the form by rule pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, on or before October 31, 1998.

(b) The completed form shall be required to be filed in every workers' compensation case at the conclusion of the case and shall be filed with the review board contemporaneously with the final order. An order of the review board is not final until the statistical data form required by this section is fully completed and filed with the review board.

(c) In cases involving a workers' compensation settlement which is submitted to the department for approval, the statistical data form required by this section shall also be completed and submitted to the department at the time of the submission of the settlement for approval. A settlement approved by the department shall not become final until the statistical data form required by this section is fully completed and received by the department.

(d) It is the responsibility of the employer or the employer's agent to complete and file the form required by this section contemporaneously with the filing of the final order or settlement. The employee and any agent of the employee are required to cooperate with the employer in completing this form.

SECTION 38. Tennessee Code Annotated, Section 50-6-245, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-245.

(a) If following an action in a workers' compensation case filed pursuant to § 50-6-225, the review board enters an order that includes multiple findings with separate awards of payment to the employee, the following shall apply:

(1) If the employer, insurer, or employee appeals one (1) or more of such findings but not all, any payments owed to the employee as the result of a finding not appealed shall be due and payable to the employee when the time for appealing such order has expired.

(2) If the employer, insurer, or employee appeals more than one (1) of such findings, any payments owed to the employee as the result of a finding not appealed or for which permission to appeal was not granted shall be due and payable to the employee when the time for appealing such order has expired.

(b) When the time for filing an appeal has expired under subsection (a)(1), the review board, unless in its discretion it determines otherwise, shall enter final order as to all findings not appealed.

SECTION 39. Tennessee Code Annotated, Section 50-6-306(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The right to compensation for occupational disease shall be forever barred unless a case before the review board therefor is commenced within one (1) year after the beginning of the incapacity for work resulting from an occupational disease, and, if death results from the occupational disease, unless a case before the review board therefor be commenced within one (1) year thereafter; provided, that if upon the date of the death of the employee the employee's claim has become barred, the claim of the employee's dependents shall likewise be barred, and in such case the claim shall be barred whether or not the employer gives the notice required by § 50-6-224(2).

SECTION 40. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 41. The commissioner of labor and workforce development and the workers' compensation review board are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 42. This act shall take effect upon becoming a law for the purpose of promulgating rules and regulations and on July 1, 2004, for making appointments and for all other purposes, the public welfare requiring it.